

AMENDED IN ASSEMBLY JUNE 12, 2012  
AMENDED IN SENATE JANUARY 10, 2012  
AMENDED IN SENATE JANUARY 4, 2012

**SENATE BILL**

**No. 122**

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**Introduced by Senator Price**

January 24, 2011

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An act to amend Sections 2709, 2786, ~~and~~ 2798, 4600, 4601, 4602, 4602.5, 4603, 4603.7, 4612, and 4613 of, and to add Sections 2135.7, 2786.2 ~~and~~, 2786.5, and 4603.8 to, the Business and Professions Code, relating to ~~nursing~~ healing arts, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 122, as amended, Price. ~~Nursing.~~ *Healing Arts.*

*(1) Existing law provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law requires the board to issue a license to an applicant who meets specified qualifications and requirements, including successfully completing a medical curriculum, as specified, in a medical school or schools located in the United States or Canada approved by the board, or in a medical school located outside the United States or Canada which otherwise meets specified requirements. Existing law requires the board to issue a license to an applicant who, among other things, (A) holds an unlimited license as a physician and surgeon in another state or states or a Canadian province or provinces, (B) has held an unrestricted license to practice medicine for at least 4 years, (C) has passed a written examination recognized by the board to be equivalent in context to that administered in California, (D) the board has determined has (i) not had disciplinary action taken against him or her,*

(ii) not been the subject of an adverse judgment or settlement, and (iii) has not committed any acts or crimes constituting grounds for denial of a certificate, in each case, as specified, (E) has completed specified post graduate training, and (F) is board certified in a specialty, as specified.

*This bill would authorize the board to issue a physician and surgeon license to an applicant who successfully completed a medical curriculum in a medical school that is not approved or recognized by the board or that has been disapproved by the board, if the applicant meets the above requirements, except that the applicant shall have held an unrestricted physician and surgeon license in another state or country for a minimum of 5, rather than 4, years.*

**Existing**

(2) *Existing law, until January 1, 2012, creates within the Department of Consumer Affairs the Board of Registered Nursing, and makes the board responsible for the licensure and regulation of registered nurses. Existing law requires the board to meet quarterly.*

*This bill would require meetings of the board to be held in northern and southern California.*

**Existing**

(3) *Existing law defines the term “approved school of nursing” and requires the board to approve and regulate registered nursing schools that are institutions of higher education or are affiliated with an institution of higher education, as specified. Existing law requires a school of nursing that is not affiliated with an institution of higher education to make an agreement with such an institution for purposes of awarding nursing degrees.*

*This bill would delete the provisions requiring an agreement and would instead require that allow the board to approve a school of nursing that is not an institution of higher education or that is affiliated with an institution of higher education, and that is subject to the requirements set forth in the California Private Postsecondary Education Act of 2009, obtain board approval to grant nursing degrees. The bill would specify that the term “approved school of nursing” includes an approved nursing program. The bill would subject all approved schools of nursing to specified fees for deposit into the Board of Registered Nursing Fund, a continuously appropriated fund. Because the bill adds a new source of revenue to a continuously appropriated fund, the bill would make an appropriation.*

*The bill would require the board to have a memorandum of understanding with the Bureau for Private Postsecondary Education to ensure that institutions approved by the bureau shall not be required to pay an additional application fee to the bureau for the addition of a school of nursing approved by the board, and to delineate the powers of the board and bureau, as specified.*

**Existing**

(4) *Existing law provides that it is unlawful for anyone to conduct a school of nursing unless the school has been approved by the board.*

This bill would authorize the board to issue cease and desist orders to a school of nursing that is not approved by the board and would require the board to notify the *Bureau for Private Postsecondary Education* and the office of the Attorney General of such a school. The bill would also provide that it is unprofessional conduct for any registered nurse to violate that provision.

(5) *Existing law, until January 1, 2015, provides for the voluntary certification of massage practitioners and massage therapists by the California Massage Therapy Council. Existing law specifies the requirements for the council to issue to an applicant a certificate as a massage therapist, including, but not limited to, (A) successfully completing curricula in massage and related subjects totaling a minimum of 500 hours, a minimum of 250 hours of which shall be from a school approved by the council and the other 250 hours may be secured as specified, or (B) passing a massage and bodywork competency assessment examination, as specified.*

*This bill would require an applicant for a massage therapist certificate to meet the other requirements for certification and to also successfully complete either (A) the 500 hours or the credit unit equivalent, as specified above, or (B) the competency assessment examination, as specified above, and curricula in massage and related subjects totaling a minimum of 250 hours, at a single approved school.*

(6) *Existing law requires the council to immediately suspend, on an interim basis, the certificate of a certificate holder, if the council receives notice that a certificate holder has been arrested for and charged with, among other crimes, soliciting or engaging in an act of prostitution or an act punishable as sexually related crime, and to provide notices of the suspension to the certificate holder and any business that employs the certificate holder, in each case, as specified.*

*This bill would, additionally, require the council to immediately suspend the certificate of a certificate holder upon receipt of clear and*

*convincing evidence that the holder has committed an act punishable as a sexually related crime or felony. The bill would also require the council to consider any available credible mitigating evidence before making a decision to so suspend a certificate. The bill would grant the holder of a certificate so suspended the right to a hearing to be held within 30 days, and require the council to send notice of suspension to the certificate holder and to other specified businesses.*

*(7) Existing law requires the council, upon request of a law enforcement agency or local government agency with responsibility for regulating massage or massage business, to provide information concerning a certificate holder, as specified.*

*This bill would authorize those local agencies, upon request of the council, to provide information to the council concerning an applicant or certificate holder, including, but not limited to, information related to criminal activity or unprofessional conduct allegedly engaged in by that person.*

*(8) Under existing law, conviction of a felony that is substantially related to the qualifications or duties of a certificate holder is a violation and basis for the council to deny an application or discipline a certificate holder.*

*This bill would also impose those consequences for a conviction of a felony, misdemeanor, infraction, or municipal code violation, or liability in an administrative or civil action, that is substantially related to the qualifications, functions, or duties of a certificate holder. The bill would also require a certificate holder to provide identifying information, upon request, as specified.*

*Vote: majority. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.*

*The people of the State of California do enact as follows:*

- 1 *SECTION 1. Section 2135.7 is added to the Business and*
- 2 *Professions Code, to read:*
- 3 *2135.7. The board may issue a physician and surgeon's*
- 4 *certificate to an applicant who meets all of the following*
- 5 *requirements:*
- 6 *(a) The applicant holds an unlimited license as a physician and*
- 7 *surgeon in another state or states, or another country or countries,*
- 8 *which was issued upon both of the following:*

1     *(1) Successful completion of a resident course of professional*  
2     *instruction leading to a degree of medical doctor equivalent to*  
3     *that specified in Section 2089, except that the applicant may have*  
4     *successfully completed the degree program at a medical school*  
5     *that is not approved or recognized by the board or a medical school*  
6     *that has been disapproved by the board pursuant to Article 4*  
7     *(commencing with Section 2080). However, nothing in this section*  
8     *shall be construed to require the board to evaluate for equivalency*  
9     *any coursework obtained at a medical school disapproved by the*  
10    *board.*

11    *(2) Taking and passing a written examination that is recognized*  
12    *by the board to be equivalent in content to that administered in*  
13    *California.*

14    *(b) The applicant has held an unrestricted license to practice*  
15    *medicine in another state or states, or another country or countries,*  
16    *or as a member of the active military, United States Public Health*  
17    *Services, or other federal program, for a period of at least five*  
18    *years. Any time spent by the applicant in a postgraduate training*  
19    *program or clinical fellowship shall not be included in the*  
20    *calculation of this five-year period.*

21    *(c) The board determines that no disciplinary action has been*  
22    *taken against the applicant by any medical licensing authority and*  
23    *that the applicant has not been the subject of adverse judgments*  
24    *or settlements resulting from the practice of medicine that the*  
25    *board determines constitutes evidence of a pattern of negligence*  
26    *or incompetence.*

27    *(d) The applicant (1) has satisfactorily completed at least one*  
28    *year of approved postgraduate training and is certified by a*  
29    *specialty board approved by the American Board of Medical*  
30    *Specialties or approved by the board pursuant to subdivision (h)*  
31    *of Section 651; (2) has satisfactorily completed at least two years*  
32    *of approved postgraduate training; or (3) has satisfactorily*  
33    *completed at least one year of approved postgraduate training*  
34    *and takes and passes the clinical competency written examination.*

35    *(e) The applicant has not committed any acts or crimes*  
36    *constituting grounds for denial of a certificate under Division 1.5*  
37    *(commencing with Section 475) or Article 12 (commencing with*  
38    *Section 2220).*

39    *(f) Any application received from an applicant who has held an*  
40    *unrestricted license to practice medicine in another state or states,*

1 *or another country or countries, or as a member of the active*  
2 *military, United States Public Health Services, or other federal*  
3 *program for five or more years shall be reviewed and processed*  
4 *pursuant to this section. Any time spent by the applicant in a*  
5 *postgraduate training program or clinical fellowship shall not be*  
6 *included in the calculation of this five-year period. This subdivision*  
7 *does not apply to applications that may be reviewed and processed*  
8 *pursuant to Section 2151.*

9 **SECTION 1.**

10 *SEC. 2.* Section 2709 of the Business and Professions Code is  
11 amended to read:

12 2709. The board for the purpose of transacting its business  
13 shall meet at least once every three months, at times and places it  
14 designates by resolution. Meetings shall be held in northern and  
15 southern California.

16 ~~SEC. 2.~~

17 *SEC. 3.* Section 2786 of the Business and Professions Code is  
18 amended to read:

19 2786. (a) An approved school of nursing, or an approved  
20 nursing program, is one that has been approved by the board, gives  
21 the course of instruction approved by the board, covering not less  
22 than two academic years, is affiliated or conducted in connection  
23 with one or more hospitals, and is an institution of higher  
24 education. For purposes of this section, “institution of higher  
25 education” includes, but is not limited to, community colleges  
26 offering an associate of arts or associate of science degree and  
27 private postsecondary institutions offering an associate of arts,  
28 associate of science, or baccalaureate degree or an entry-level  
29 master’s degree, and is an institution that is not subject to the  
30 California Private Postsecondary Education Act of 2009 (Chapter  
31 8 (commencing with Section 94800) of Part 59 of Division 10 of  
32 Title 3 of the Education Code).

33 (b) A school of nursing that ~~is not an institution of higher~~  
34 ~~education or that is affiliated with an institution of higher education~~  
35 ~~as required by the board, and is affiliated with an institution~~ that  
36 is subject to the California Private Postsecondary Education Act  
37 of 2009 (Chapter 8 (commencing with Section 94800) of Part 59  
38 of Division 10 of Title 3 of the Education Code), ~~shall~~ *may* be  
39 approved by the board to grant an associate of arts or associate of  
40 science degree to individuals who graduate from the school of

1 nursing or to grant a baccalaureate degree in nursing with  
2 successful completion of an additional course of study as approved  
3 by the board and the institution involved.

4 (c) The board shall determine by regulation the required subjects  
5 of instruction to be completed in an approved school of nursing  
6 for licensure as a registered nurse and shall include the minimum  
7 units of theory and clinical experience necessary to achieve  
8 essential clinical competency at the entry level of the registered  
9 nurse. The board's standards shall be designed to require all schools  
10 to provide clinical instruction in all phases of the educational  
11 process.

12 (d) The board shall perform or cause to be performed an analysis  
13 of the practice of the registered nurse no less than every five years.  
14 Results of the analysis shall be utilized to assist in the  
15 determination of the required subjects of instruction, validation of  
16 the licensing examination, and assessment of the current practice  
17 of nursing.

18 ~~SEC. 3.~~

19 *SEC. 4.* Section 2786.2 is added to the Business and Professions  
20 Code, to read:

21 2786.2. ~~All~~ A private postsecondary ~~schools~~ *school* of nursing  
22 approved by the board pursuant to subdivision (b) of Section 2786  
23 shall comply with ~~Article 8 (commencing with Section 94897) to~~  
24 ~~Article 16 (commencing with Section 94928), inclusive, of, and~~  
25 ~~shall be subject to Article 18 (commencing with Section 94932)~~  
26 ~~of~~, Chapter 8 of Part 59 of Division 10 of Title 3 of the Education  
27 Code. The board shall have a memorandum of understanding with  
28 the Bureau for Private Postsecondary Education to ensure  
29 ~~compliance with these provisions, including the handling of student~~  
30 ~~complaints regarding these approved schools of nursing that~~  
31 *institutions approved by the bureau are not required to pay an*  
32 *additional application fee to the bureau for the addition of a school*  
33 *of nursing approved by the board, and to delineate the powers of*  
34 *the board to review and approve schools of nursing and the powers*  
35 *of the bureau to protect the interest of students attending*  
36 *institutions governed by the Private Postsecondary Education Act*  
37 *of 2009, Chapter 8 (commencing with Section 94800) of Division*  
38 *10 of Title 3 of the Education Code.*

1     ~~SEC. 4.~~

2     ~~SEC. 5.~~ Section 2786.5 is added to the Business and Professions  
3 Code, to read:

4     2786.5. (a) An institution of higher education or a private  
5 postsecondary school of nursing approved by the board pursuant  
6 to subdivision (b) of Section 2786 shall remit to the board for  
7 deposit in the Board of Registered Nursing Fund the following  
8 fees, in accordance with the following schedule:

9     (1) The fee for approval of a school of nursing shall be five  
10 thousand dollars (\$5,000).

11     (2) The fee for continuing approval of a ~~new~~ nursing program  
12 *established after January 1, 2013*, shall be three thousand five  
13 hundred dollars (\$3,500).

14     (3) The processing fee for authorization of a substantive change  
15 to an approval of a school of nursing shall be five hundred dollars  
16 (\$500).

17     (b) If the board determines that the annual cost of providing  
18 oversight and review of a school of nursing, as required by this  
19 article, is less than the amount of any fees required to be paid by  
20 that institution pursuant to this article, the board may decrease the  
21 fees applicable to that institution to an amount that is proportional  
22 to the board's costs associated with that institution.

23     ~~SEC. 5.~~

24     ~~SEC. 6.~~ Section 2798 of the Business and Professions Code is  
25 amended to read:

26     2798. (a) It is unlawful for anyone to conduct a school of  
27 nursing unless the school has been approved by the board.

28     (b) If the board has a reasonable belief, either by complaint or  
29 otherwise, that a school is allowing students to apply for its nursing  
30 program and that nursing program does not have the approval of  
31 the board, the board shall immediately order the school to cease  
32 and desist from offering students the ability to enroll in its nursing  
33 program. The board shall also notify *the Bureau for Private*  
34 *Postsecondary Education* and the Attorney General's office that  
35 the school is offering students the ability to enroll in a nursing  
36 program that does not have the approval of the board.

37     (c) It shall be unprofessional conduct for any registered nurse  
38 to violate or attempt to violate, either directly or indirectly, or to  
39 assist or abet the violation of, this section.



(d) This section is not applicable to schools conducted under Section 2789 of this chapter.

*SEC. 7. Section 4600 of the Business and Professions Code is amended to read:*

4600. As used in this chapter, the following terms shall have the following meanings:

(a) “Approved school” or “approved massage school” means a school approved by the council that meets minimum standards for training and curriculum in massage and related subjects and that meets any of the following requirements:

(1) Is approved by the Bureau for Private Postsecondary Education.

(2) Is approved by the Department of Consumer Affairs.

(3) Is an institution accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges and that is one of the following:

(A) A public institution.

(B) An institution incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, and that is not managed by any entity for profit.

(C) A for-profit institution.

(D) An institution that does not meet all of the criteria in subparagraph (B) that is incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, that has been in continuous operation since April 15, 1997, and that is not managed by any entity for profit.

(4) Is a college or university of the state higher education system, as defined in Section 100850 of the Education Code.

(5) Is a school of equal or greater training that is recognized by the corresponding agency in another state or accredited by an agency recognized by the United States Department of Education.

(b) “Compensation” means the payment, loan, advance, donation, contribution, deposit, or gift of money or anything of value.

(c) “Massage therapist,” “bodyworker,” “bodywork therapist,” or “massage and bodywork therapist” means a person who is

1 certified by the California Massage Therapy Council under  
2 subdivision (c) of Section 4601 and who administers massage for  
3 compensation.

4 (d) “Massage practitioner,” “bodywork practitioner,” or  
5 “massage and bodywork practitioner” means a person who is  
6 certified by the California Massage Therapy Council under  
7 subdivision (b) of Section 4601 and who administers massage for  
8 compensation.

9 (e) “Council” means the California Massage Therapy Council  
10 created pursuant to this chapter, which shall be a nonprofit  
11 organization exempt from taxation under Section 501(c)(3) of Title  
12 26 of the United States Code. The council may commence activities  
13 as authorized by this section once it has submitted a request to the  
14 Internal Revenue Service seeking this exemption. Whenever the  
15 term “organization” is used in this chapter, it shall mean the  
16 council, except where the context indicates otherwise.

17 (f) “Registered school” means a school approved by the council  
18 that meets minimum standards for training and curriculum in  
19 massage and related subjects and that either is approved by the  
20 Bureau for Private Postsecondary Education or the Department of  
21 Consumer Affairs, or is an institution accredited by the senior  
22 commission or the junior commission of the Western Association  
23 of Schools and Colleges as defined in paragraph (3) of subdivision  
24 (a), is a college or university of the state higher education system  
25 as defined in Section 100850 of the Education Code, or is a school  
26 of equal or greater training that is approved by the corresponding  
27 agency in another state.

28 (g) For purposes of this chapter, the terms “massage” and  
29 “bodywork” shall have the same meaning.

30 (h) “*Operator of a massage business*” means a person, whether  
31 owner or nonowner, who manages or operates a massage business.

32 SEC. 8. Section 4601 of the Business and Professions Code is  
33 amended to read:

34 4601. (a) The council shall issue a certificate under this chapter  
35 to an applicant who satisfies the requirements of this chapter.

36 (b) (1) In order to obtain certification as a massage practitioner,  
37 an applicant shall submit a written application and provide the  
38 council with satisfactory evidence that he or she meets all of the  
39 following requirements:

40 (A) The applicant is 18 years of age or older.

(B) The applicant has successfully completed, at a single approved school, curricula in massage and related subjects, totaling a minimum of 250 hours *or the credit unit equivalent*, that incorporates appropriate school assessment of student knowledge and skills. Included in the hours shall be instruction addressing anatomy and physiology, contraindications, health and hygiene, and business and ethics, with at least 100 hours of the required minimum 250 hours devoted to these curriculum areas.

(C) All fees required by the council have been paid.

(2) New certificates shall not be issued pursuant to this subdivision after December 31, 2015. Certificates issued pursuant to this section or subdivision (a) or (c) of Section 4604 on or before December 31, 2015, shall, after December 31, 2015, be renewed without any additional educational requirements, provided that the certificate holder continues to be qualified pursuant to this chapter.

(c) In order to obtain certification as a massage therapist, an applicant shall submit a written application and provide the council with satisfactory evidence that he or she meets all of the following requirements:

(1) The applicant is 18 years of age or older.

(2) The applicant satisfies at least one of the following requirements:

(A) He or she has successfully completed the curricula in massage and related subjects totaling a minimum of 500 hours *or the credit unit equivalent*. Of this 500 hours, a minimum of 250 hours shall be from approved schools. The remaining 250 hours required may be secured either from approved or registered schools, or from continuing education providers approved by, or registered with, the council or the Department of Consumer Affairs. After December 31, 2015, applicants may only satisfy the curricula in massage and related subjects from approved schools.

(B) The applicant has *done both of the following*:~~successfully~~

(i) *Successfully completed, at a single approved school, curricula in massage and related subjects totaling a minimum of 250 hours that incorporates appropriate school assessment of student knowledge and skills. Included in the hours shall be instruction addressing anatomy and physiology, contraindications, health and hygiene, and business and ethics, with at least 100 hours of the required minimum 250 hours devoted to these curriculum areas.*~~passed~~

1     (ii) *Passed* a massage and bodywork competency assessment  
2 examination that meets generally recognized psychometric  
3 principles and standards, and that is approved by the board. The  
4 successful completion of this examination may have been  
5 accomplished before the date the council is authorized by this  
6 chapter to begin issuing certificates.

7     (3) All fees required by the council have been paid.

8     (d) The council shall issue a certificate to an applicant who  
9 meets the other qualifications of this chapter and holds a current  
10 and valid registration, certification, or license from any other state  
11 whose licensure requirements meet or exceed those defined within  
12 this chapter. The council shall have discretion to give credit for  
13 comparable academic work completed by an applicant in a program  
14 outside of California.

15     (e) An applicant applying for a massage therapist certificate  
16 shall file with the council a written application provided by the  
17 council, showing to the satisfaction of the council that he or she  
18 meets all of the requirements of this chapter.

19     (f) Any certification issued under this chapter shall be subject  
20 to renewal every two years in a manner prescribed by the council,  
21 and shall expire unless renewed in that manner. The council may  
22 provide for the late renewal of a license.

23     (g) (1) The council shall have the responsibility to determine  
24 that the school or schools from which an applicant has obtained  
25 the education required by this chapter meet the requirements of  
26 this chapter. If the council has any reason to question whether or  
27 not the applicant received the education that is required by this  
28 chapter from the school or schools that the applicant is claiming,  
29 the council shall investigate the facts to determine that the applicant  
30 received the required education prior to issuing a certificate.

31     (2) For purposes of paragraph (1) and any other provision of  
32 this chapter for which the council is authorized to receive factual  
33 information as a condition of taking any action, the council shall  
34 have the authority to conduct oral interviews of the applicant and  
35 others or to make any investigation deemed necessary to establish  
36 that the information received is accurate and satisfies any criteria  
37 established by this chapter.

38     (h) *The certificate issued pursuant to this chapter, as well as*  
39 *any identification card issued by the council, shall be surrendered*

1 *to the council by any certificate holder whose certificate has been*  
2 *suspended or revoked.*

3 *SEC. 9. Section 4602 of the Business and Professions Code is*  
4 *amended to read:*

5 4602. (a) The council may discipline a certificate holder by  
6 any, or a combination, of the following methods:

7 (1) Placing the certificate holder on probation.

8 (2) Suspending the certificate and the rights conferred by this  
9 chapter on a certificate holder for a period not to exceed one year.

10 (3) Revoking the certificate.

11 (4) Suspending or staying the disciplinary order, or portions of  
12 it, with or without conditions.

13 (5) Taking other action as the council, as authorized by this  
14 chapter or its bylaws, deems proper.

15 (b) The council may issue an initial certificate on probation,  
16 with specific terms and conditions, to any applicant.

17 (c) (1) Notwithstanding any other provision of law, if the  
18 council receives notice that a certificate holder has been arrested  
19 and charges have been filed by the appropriate prosecuting agency  
20 against the certificate holder alleging a violation of subdivision  
21 (b) of Section 647 of the Penal Code or any other offense described  
22 in subdivision (h) of Section 4603, the council shall take all of the  
23 following actions:

24 (A) Immediately suspend, on an interim basis, the certificate of  
25 that certificate holder.

26 (B) Notify the certificate holder within 10 days at the address  
27 last filed with the council that the certificate has been suspended,  
28 and the reason for the suspension.

29 (C) Notify any business within 10 days that the council has in  
30 its records as employing the certificate holder that the certificate  
31 has been suspended.

32 (2) Upon notice to the council that the charges described in  
33 paragraph (1) have resulted in a conviction, the suspended  
34 certificate shall become subject to permanent revocation. The  
35 council shall provide notice to the certificate holder within 10 days  
36 that it has evidence of a valid record of conviction and that the  
37 certificate will be revoked unless the certificate holder provides  
38 evidence within 15 days that the conviction is either invalid or that  
39 the information is otherwise erroneous.

(3) Upon notice that the charges have resulted in an acquittal, or have otherwise been dismissed prior to conviction, the certificate shall be immediately reinstated and the certificate holder and any business that received notice pursuant to subparagraph (C) of paragraph (1) shall be notified of the reinstatement within 10 days.

*(d) Notwithstanding any other provision of law, if the council receives clear and convincing evidence that a certificate holder has committed an act punishable as a sexually related crime or a felony, the council may immediately suspend the certificate of that certificate holder. A decision to immediately suspend a certificate pursuant to this subdivision shall be based on clear and convincing evidence and the council shall also consider any available credible mitigating evidence before making a decision to suspend a certificate. Written statements by any person shall not be considered by the council when determining whether to immediately suspend a certificate unless made under penalty of perjury. If the council suspends the certificate of a certificate holder in accordance with this subdivision, the council shall take all of the following additional actions:*

*(1) Notify the certificate holder, at the address last filed with the council, within 10 business days by a method providing delivery confirmation, that the certificate has been suspended, the reason for the suspension, and that the certificate holder has the right to request a hearing pursuant to paragraph (3).*

*(2) Notify by electronic mail or any other means consistent with the notice requirements of this chapter, within 10 business days, any business that the council has in its records as employing or contracting with the certificate holder for massage services, and the California city or county permitting authority that has jurisdiction over any business that the council has in its records as employing or contracting with the certificate holder, that the certificate has been suspended.*

*(3) A certificate holder whose certificate is suspended pursuant to this subdivision shall have the right to request, in writing, a hearing to challenge the factual basis for the suspension. If the holder of the suspended certificate requests a hearing on the suspension, the hearing shall be held within 30 days after receipt of the request. A holder whose certificate is suspended based on paragraph (1) shall be subject to revocation or other discipline in accordance with subdivision (a) of Section 4602.*

1     *SEC. 10. Section 4602.5 of the Business and Professions Code*  
2     *is amended to read:*

3     4602.5. (a) Upon the request of any law enforcement agency  
4     or any other representative of a local government agency with  
5     responsibility for regulating, or administering a local ordinance  
6     relating to, massage or massage businesses, the council shall  
7     provide information concerning a certificate holder, including, but  
8     not limited to, the current status of the certificate, any history of  
9     disciplinary actions taken against the certificate holder, the home  
10    and work addresses of the certificate holder, and any other  
11    information in the council's possession that is necessary to verify  
12    facts relevant to administering the local ordinance.

13    (b) *Upon the request of the council to any law enforcement*  
14    *agency or any other representative of a local government agency*  
15    *with responsibility for regulating or administering a local*  
16    *ordinance relating to massage or massage businesses, the law*  
17    *enforcement agency or local government agency is authorized to*  
18    *provide information to the council concerning a certificate*  
19    *applicant or certificate holder, including, but not limited to, the*  
20    *current status of any application or local permit; any history of*  
21    *disciplinary action taken against the certificate applicant or*  
22    *certificate holder; any information related to criminal activity or*  
23    *unprofessional conduct allegedly engaged in by a certificate*  
24    *applicant or certificate holder, including, but not limited to, police*  
25    *reports and declarations of conduct; the home and work addresses*  
26    *of the certificate applicant or certificate holder; and any other*  
27    *information in the law enforcement agency's or other local*  
28    *government agency's possession that is necessary to verify facts*  
29    *or implement the provisions of this chapter.*

30    ~~(b)~~

31    (c) The council shall accept information provided by any law  
32    enforcement agency or any other representative of a local  
33    government agency with responsibility for regulating, or  
34    administering a local ordinance relating to, massage or massage  
35    businesses. The council shall have the responsibility to review any  
36    information received and to take any actions authorized by this  
37    chapter that are warranted by that information.

38    *SEC. 11. Section 4603 of the Business and Professions Code*  
39    *is amended to read:*

1     4603. It is a violation of this chapter for a certificate holder to  
2     commit, and the council may deny an application for a certificate  
3     or discipline a certificate holder for, any of the following:

4     (a) Unprofessional conduct, including, but not limited to, denial  
5     of licensure, revocation, suspension, restriction, or any other  
6     disciplinary action against a certificate holder by another state or  
7     territory of the United States, by any other government agency, or  
8     by another California health care professional licensing board. A  
9     certified copy of the decision, order, or judgment shall be  
10    conclusive evidence of these actions.

11    (b) Procuring a certificate by fraud, misrepresentation, or  
12    mistake.

13    (c) Violating or attempting to violate, directly or indirectly, or  
14    assisting in or abetting the violation of, or conspiring to violate,  
15    any provision or term of this chapter or any rule or bylaw adopted  
16    by the council.

17    (d) Conviction of any felony, ~~or conviction of a misdemeanor,~~  
18    ~~infraction, or municipal code violation, or liability in an~~  
19    ~~administrative or civil action,~~ that is substantially related to the  
20    qualifications, *functions*, or duties of a certificate holder, in which  
21    event the record of the conviction *or other judgment* shall be  
22    conclusive evidence of the crime *or liability*.

23    (e) Impersonating an applicant or acting as a proxy for an  
24    applicant in any examination referred to under this chapter for the  
25    issuance of a certificate.

26    (f) Impersonating a certified practitioner or therapist, or  
27    permitting or allowing an uncertified person to use a certificate.

28    (g) Committing any fraudulent, dishonest, or corrupt act that is  
29    substantially related to the qualifications or duties of a certificate  
30    holder.

31    (h) Committing any act punishable as a sexually related crime.

32    *SEC. 12. Section 4603.7 of the Business and Professions Code*  
33    *is amended to read:*

34    4603.7. A certificate holder shall include the name under which  
35    he or she is certified and his or her certificate number in any and  
36    all advertising and shall display his or her *original* certificate at  
37    his or her place of business. *A certificate holder shall have his or*  
38    *her identification card in his or her possession while providing*  
39    *massage services.*



1     *SEC. 13. Section 4603.8 is added to the Business and*  
2     *Professions Code, to read:*

3     *4603.8. A certificate holder shall, upon request at the location*  
4     *where he or she is providing massage services, provide his or her*  
5     *full name and certificate number to a member of the public, the*  
6     *council, or a member of law enforcement or a local government*  
7     *agency charged with regulating massage.*

8     *SEC. 14. Section 4612 of the Business and Professions Code*  
9     *is amended to read:*

10    4612. (a) (1) The holder of a certificate issued pursuant to  
11    this chapter shall have the right to practice massage, consistent  
12    with this chapter and the qualifications established by his or her  
13    certification, in any city, county, or city and county in this state  
14    and shall not be required to obtain any other license, permit, or  
15    other authorization, except as provided in this section, to engage  
16    in that practice.

17    (2) Notwithstanding any other provision of law, a city, county,  
18    or city and county shall not enact an ordinance that requires a  
19    license, permit, or other authorization to provide massage for  
20    compensation by an individual who is certified pursuant to this  
21    chapter and who is practicing consistent with the qualifications  
22    established by his or her certification, or by a massage business  
23    or massage establishment that employs or uses only persons who  
24    are certified pursuant to this chapter to provide massage for  
25    compensation. No provision of any ordinance enacted by a city,  
26    county, or city and county that is in effect before the effective date  
27    of this chapter, and that requires a license, permit, or other  
28    authorization to provide massage for compensation, may be  
29    enforced against an individual who is certified pursuant to this  
30    chapter or against a massage business or massage establishment  
31    that employs or uses only persons who are certified pursuant to  
32    this chapter to provide massage for compensation.

33    (3) Except as provided in subdivision (b), nothing in this section  
34    shall be interpreted to prevent a city, county, or city and county  
35    from adopting or enforcing any local ordinance that provides for  
36    reasonable health and safety requirements for massage  
37    establishments or businesses. Subdivision (b) shall not apply to  
38    any massage establishment or business that employs or uses  
39    persons to provide massage services who are not certified pursuant  
40    to this chapter.

(b) (1) This subdivision shall apply only to massage establishments or businesses that are sole proprietorships, where the sole proprietor is certified pursuant to this chapter, and to massage establishments or businesses that employ or use only persons certified pursuant to this chapter to provide massage services. For purposes of this subdivision, a sole proprietorship is a business where the owner is the only person employed by that business to provide massage services.

(2) (A) Any massage establishment or business described in paragraph (1) shall maintain on its premises evidence for review by local authorities that demonstrates that all persons providing massage services are certified.

(B) Nothing in this section shall preclude a city, county, or city and county from including in a local ordinance a provision that requires a business described in paragraph (1) to file copies or provide other evidence of the certificates held by the persons who are providing massage services at the business.

(3) A city, county, or city and county may charge a massage business or establishment a business licensing fee, provided that the fee shall be no ~~different~~ *higher* than the *lowest* fee that is ~~uniformly~~ applied to all other individuals and businesses providing professional services, as defined in subdivision (a) of Section 13401 of the Corporations Code.

(4) Nothing in this section shall prohibit a city, county, or city and county from enacting ordinances, regulations, rules, requirements, restrictions, land use regulations, moratoria, conditional use permits, or zoning requirements applicable to an individual certified pursuant to this chapter or to a massage establishment or business that uses only individuals who are certified pursuant to this chapter to provide massage for compensation, provided that, unless otherwise exempted by this chapter, these ordinances, regulations, rules, requirements, restrictions, land use regulations, moratoria, conditional use permits, and zoning requirements shall be no different than the requirements that are uniformly applied to all other individuals and businesses providing professional services, as defined in subdivision (a) of Section 13401 of the Corporations Code. No provision of any ordinance, regulation, rule, requirement, restriction, land use regulation, moratoria, conditional use permit, or zoning requirement enacted by a city, county, or city and county

1 that is in effect before the effective date of this chapter, and that  
2 is inconsistent with this paragraph, may be enforced against an  
3 individual who is certified pursuant to this chapter or against a  
4 massage business or massage establishment that uses only  
5 individuals who are certified pursuant to this chapter to provide  
6 massage for compensation.

7 (5) Local building code or physical facility requirements  
8 applicable to massage establishments or businesses shall not require  
9 additional restroom, shower, or other facilities that are not  
10 uniformly applicable to other professional or personal service  
11 businesses, nor shall building or facility requirements be adopted  
12 that (A) require unlocked doors when there is no staff available to  
13 ensure security for clients and massage staff who are behind closed  
14 doors, or (B) require windows that provide a view into massage  
15 rooms that interfere with the privacy of clients of the massage  
16 business.

17 (6) A city, county, or city and county may adopt reasonable  
18 health and safety requirements with respect to massage  
19 establishments or businesses, including, but not limited to,  
20 requirements for cleanliness of massage rooms, towels and linens,  
21 and reasonable attire and personal hygiene requirements for persons  
22 providing massage services, provided that nothing in this paragraph  
23 shall be interpreted to authorize adoption of local ordinances that  
24 impose additional qualifications, such as medical examinations,  
25 background checks, or other criteria, upon any person certified  
26 pursuant to this chapter.

27 (7) Nothing in this section shall preclude a city, county, or city  
28 and county from doing any of the following:

29 (A) Requiring an applicant for a business license to operate a  
30 massage business or establishment to fill out an application that  
31 requests the applicant to provide relevant information, *as long as*  
32 *the information requested is the same as that required of other*  
33 *individuals and professionals providing professional services as*  
34 *defined in subdivision (a) of Section 13401 of the Corporations*  
35 *Code.*

36 (B) Making reasonable investigations into the information so  
37 provided.

38 (C) Denying or restricting a business license if the applicant  
39 has provided materially false information.

(c) An owner or operator of a massage business or establishment ~~subject to subdivision (b)~~ *who is certified pursuant to this chapter* shall be responsible for the conduct of all employees or independent contractors working on the premises of the business. Failure to comply with this chapter may result in revocation of the owner's or operator's certificate in accordance with Section 4603. Nothing in this section shall preclude a local ordinance from authorizing suspension, revocation, or other restriction of a license or permit issued to a massage establishment or business if violations of this chapter, or of the local ordinance, occur on the business premises.

(d) Nothing in this section shall preclude a city, county, or city and county from adopting a local ordinance that is applicable to massage businesses or establishments described in paragraph (1) of subdivision (b) and that does either of the following:

(1) Provides that duly authorized officials of the city, county, or city and county have the right to conduct reasonable inspections, during regular business hours, to ensure compliance with this chapter, the local ordinance, or other applicable fire and health and safety requirements.

(2) Requires an owner or operator to notify the city, county, or city and county of any intention to rename, change management, or convey the business to another person.

(e) Nothing in this chapter shall be construed to preclude a city, county, or city and county from requiring a background check of an owner or operator of a massage establishment who owns 5 percent or more of a massage business or massage establishment and who is not certified pursuant to this chapter. The background check ~~may consist~~ *include, but is not limited to, a criminal background check, including requiring submission of fingerprints for a state and federal criminal background check, submission of an application that requires the applicant to state information, including, but not limited to, the applicant's business, occupation, and employment history for the five 10 years preceding the date of application, the inclusive dates of same, and the name and address of any massage business or other like establishment owned or operated by any person who is subject to the background check requirement of this subdivision. If a noncertified owner's or operator's background check results in a finding that the city, county, or city and county determines is relevant to owning or operating a massage establishment, then the provisions of*

*subdivision (a) and (b) shall not apply to that establishment and the city, county, or city and county may regulate that establishment in any manner it deems proper that is in accordance with the law.*

*SEC. 15. Section 4613 of the Business and Professions Code is amended to read:*

*4613. (a) Nothing in this chapter shall restrict or limit in any way the authority of a city, county, or city and county to adopt a local ordinance governing any person who is not certified pursuant to this chapter.*

*(b) Nothing in this chapter is intended to affect the practice rights of any person licensed by the state to practice or perform any functions or services pursuant to that license.*

*(c) Nothing in this chapter shall be construed to restrict or limit in any way the authority of a city, county, or city and county to adopt a local ordinance restricting the opening of a new massage establishment in a location in which a massage establishment has been closed due to criminal activity.*

**CORRECTIONS:**

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